

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 06.10.2022

% **Judgment delivered on: 13.12.2022**

+ **W.P.(C) 7167/2003**

KAILASH CHAND

..... Petitioner

Through: Mr. Ravi Rai, Advocate.

versus

UOI & ORS.

..... Respondents

Through: Ms. Vertika Sharma, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The instant Writ Petition under Article 226 & 227 has been preferred against the Order of the Ld. Central Administrative Tribunal (“CAT”) dated 05.08.2003 in O.A. 3114/ 2002 whereby the Ld. CAT has rejected the claim of the Petitioner (“**Impugned Order**”).

2. The brief facts of this case are that the Petitioner was initially working as a Floor Assistant in the Respondent organisation in the pay scale of Rs.330-480, on contractual basis. Later, he was regularised as a Floor Assistant from 03.05.1982. On 02.04.1984 the Respondents issued an advertisement for filling up the post of Production Assistant in a higher pay

scale, i.e., of Rs. 425-750. The Petitioner responded to the said advertisement, was selected for the said post, and the Respondents issued a memorandum dated 20.12.1984 confirming the Petitioner's selection subsequent to which he started working.

3. It is the case of the Petitioner that the Respondents have made him work as a Production Assistant but have not paid him the requisite salary for the post. Further, that they have denied him the benefits of seniority and arrears of salary flowing directly from the Judgement and Order of this Court dated 30.07.2001 in W.P.(C) 7553/ 1999.

4. This Court, vide Judgment and Order of this Court dated 30.07.2001 in W.P. (C) 7553/ 1999 held that the Respondents are required to consider renewal of Petitioner's contract from 04.10.1993 and grant payment of arrears of salary from 16.01.1985 till 04.10.1993.

5. Subsequent to the Judgement of this Court dated 30.07.2001 the Respondents had passed a series of orders on 19.12.2001 and 16.01.2002 vide which the Petitioner's employment was regularised and his pay was notionally fixed from 04.10.1993. However, the Petitioner was not paid the salary for the post of Production Assistant for the period he had not performed his duty as one. Further, it was stated that the Petitioner along with the other Production Assistants will not be allowed to claim seniority on the basis of their past service.

6. The Petitioner has prayed for this Court to set aside the Impugned Order and direct the Respondents to pay alleged arrears of wages due and drawn from 05.10.1993 to 19.12.2001 after grant of due increment and seniority along with penal interest at the rate of 24% per annum.

7. It is pertinent to note that on the basis of complaints received alleging lack of fairness in selection of 14 Production Assistants who were selected along with the Petitioner, an inquiry was made by the Central Bureau of Investigation (“CBI”) against their contractual employment. Vide the inquiry report, it was found that there was irregularity in their appointment. On 30.07.1988, it was decided to terminate the employment of said Production Assistants under Rule 5(1) of CCS Temporary Service Rules, 1965. Thereafter, the terminated Production Assistants had decided to file O.A. No. 1441/ 88 before the Ld. CAT which was dismissed. Subsequently, upon representations being made by the Production Assistants to the Respondents, on sympathetic grounds, they were appointed afresh on the condition that their seniority will only be counted from the date of their joining and they cannot take benefit of seniority of past service.

8. Vide Order dated 27.04.2009 in this Petition, a Division Bench of this Court had recorded the submissions of the Ld. Counsel for the Petitioner wherein he had categorically stated that the only question which remained to be adjudicated was regarding the payment of salary for the period the Petitioner was not allowed to work. Thus, that is the only question this Court would be adjudicating upon and not any alleged seniority due to the Petitioner.

9. It is submitted by the Petitioner that he is not a person who is similarly placed as the 14 other Production Assistants who were selected along with him were not a party to the said O.A. No. 1441/88 and he was never served any notice of termination of his service under Rule 5(1) of CCS Temporary Service Rules, 1965 which was the subject matter of O.A.

1441/88, thus. It is further submitted by the Petitioner that he is not a person who is similarly placed as the Applicants in O.A. No. 1441/88 as he was being denied the salary of a Production Assistant while the other 14 Production Assistants selected on contractual basis were being paid the salary of said post.

10. It is the case of the Petitioner that he has been prevented to work as a Production Assistant from 04.10.1993 to 20.12.2001 by the Respondent for no fault of his own and that the principle of 'no work no pay' would not be applicable to his case as has been pleaded by the Respondents for withholding the said alleged arrears of pay. It is further submitted that Fundamental Rule 17 (1) is also not applicable to his case for grant of arrears of pay as the Petitioner has been kept away from work by the authorities for no fault of his own. It is submitted that the Petitioner was willing to work and was also agitating against this action of the Respondents in not granting him his salary of Production Assistant.

11. It is submitted by the Petitioner that the Ld. CAT did not consider the jurisprudence laid down by the Hon'ble Supreme Court in the case of ***Union of India & Ors. v. K.V. Jankiraman & Ors.***, (1991) 4 SCC 109, regarding the principle of 'no work no pay' and the Ld. CAT has been misled by irrelevant submissions made by the Respondents while placing reliance on O.A. 1441/88.

12. It is submitted by the Petitioner that the Respondent deliberately denied one increment while notionally fixing the salary of the Petitioner on 01.01.1986. It is submitted that the Petitioner was supposed to be granted the same in accordance with the relevant pay commission and accordingly,

difference of wages for the period of 05.10.1993 to 19.12.2001 have also not been paid by the Respondents to the Petitioner.

13. It is submitted by the Petitioner that the action of the Respondents in not granting alleged difference of wages due to the Petitioner is tantamount to punishment without cause. Further, denial of the same on the basis of consideration of seniority on the basis of any other consideration including O.A. 1441/ 88 is tantamount to disregard of Judgement of this Court.

14. It is the case of the Respondents that there is no cause of action in favour of the Petitioner and that he has suppressed the true and material facts from this Court in order to mislead.

15. It has been submitted by the Respondent that pursuant to O.A. 1441/88 being dismissed by the Ld. CAT, the Applicants therein had approached the Respondents for a sympathetic reconsideration of their cases and after taking a sympathetic view, it was decided to allow them to work as Production Assistants via fresh appointment from 06.01.1994 subject to the condition that they will not be given the benefit of seniority on account of their past service.

16. It is submitted that the Respondents had given notional fixation of pay from 01.01.1986 to the Petitioner as he had not worked for the said period on the principle of 'no work no pay' and also in accordance with the Office Memorandum of Ministry of Information and Broadcasting bearing No. 310/173/97-B(D).

17. It is submitted by the Respondent that there has been no increment due to the Petitioner which has been denied by the Respondents and they have fully complied with the directions issued by this Court vide Order

dated 30.07.2001 in W.P. (C) 7553/ 1999. The Respondents pointed out that a Contempt Petition bearing No.308/ 2002 was also filed by the Petitioner herein alleging that the Respondents have not complied with aforesaid directions of this Court. The same was dismissed by this Court vide Order dated 02.08.2002 with the observations that the Respondents have complied with the Orders of this Court.

18. It is submitted by the Respondents that the Petitioner cannot claim himself to be dissimilar from the other 14 persons who were selected in the same panel. It was further submitted that the Petitioner has been treated in a similar manner as the other 14 Production Assistants, as all of them were selected from the same panel. It is submitted that the Petitioner cannot be given a special status simply because he was appointed on the basis of directions of this Court and if the conditions on the basis of which the other 14 Production Assistants were reinstated, are made inapplicable to the Petitioner herein, it would lead to a situation where the others would ask for the same benefit too.

19. It is submitted by the Respondents that the Petitioner will be placed in the seniority list w.e.f. 06.01.1994 i.e., the date on which 14 other similarly placed Production Assistants selected in the same panel have been given seniority.

20. Heard learned Counsels appearing for the parties and perused the material on record.

21. In the opinion of this Court, it cannot be stated that the Petitioner is not similarly situated as the Applicants in O.A. 1441/ 88. These Production Assistants were selected along with the Petitioner herein and vide O.M.

dated 19.12.2001 bearing No. 2/37/99-SI of the Directorate General, Doordarshan, the same has been categorically stated. Further, all the benefits given to the 14 other Production Assistants were extended to the Petitioner. This Court is not in agreement with the submissions of the Petitioner stating that he is not similarly situated. The same benefits given to the other 14 similarly situated persons were extended to the Petitioner and vide Memorandum dated 11.03.2002 bearing No. 19(KC)/86-S/16122 it has been clearly stated that the Petitioner would be reinstated on the same terms as the 14 other Production Assistants were reinstated.

22. A perusal of the Impugned Order shows that the Ld. CAT has not committed any error in passing the same and vide Orders passed by the Respondents, all the directions of this Court issued vide Order dated 30.07.2001 in W.P. (C) No. 7533/ 99 had been complied with. The operative portion of the Impugned Order is reproduced as below –

“6. From the facts mentioned in the impugned OM dated 19.12.2001 it is seen that on the basis of the CBI enquiry report, the services of the aforesaid 14 Production Assistants who were selected along with the applicant in 1984, were either terminated under rule-5 of CCS (Temporary Service) Rules or their contracts were not renewed. The 14 Production Assistants had filed OA No.1441/1988 against termination of their services. The Tribunal by its order dated 5.11.1993 dismissed the OA. Subsequently on the basis of the representation submitted by them, the matter was considered by the respondents and it was decided that- all the 14 applicants in OA 1441/1988 may be allowed to continue to work in Doordarshan subject to furnishing of an undertaking to the effect that they will not claim the benefit of seniority for the past service, which will be counted for pensionary and allied benefits. They were accordingly appointed afresh as Production Assistants w.e.f. 6.1.1994. According to the respondents, the

same benefits as had been extended to those 14 Production Assistants who were selected along with the applicant, have been extended to him, subject to his submitting a similar undertaking. Shri S.M. Arif, learned counsel has submitted that the respondents have to give similar treatment to similarly situated persons like the applicant and the other 14 persons who were selected along with him. They have also submitted that the applicant will be placed in the seniority list w.e.f. 6.1.1994 i.e. the date on which 14 other similarly placed Production Assistants selected in the same panel have been given seniority. The learned counsel has also submitted that the applicant had been selected on contract basis as Production Assistant and the post he had held earlier was Floor Assistant and he was not promoted to the post of Production Assistant, where he can claim seniority from an earlier date 1984. They have also relied on the judgement of the Delhi High Court order dated 30.7.2001. In the circumstances, they have submitted that the applicant has no case for claiming seniority as Production Assistant from 20.12.1984 in view of the specific, directions of the High Court.

7. We have carefully considered the submissions of the learned counsel for the parties and the pleadings on record.

8. The relevant portion of the Hon'ble High Court order dated 30.7.2001 reads as follows:

“We, accordingly hold that petitioner shall be deemed to have been treated as Production Assistant pursuant to Memo of offer due to conduct of respondents and to have worked against the post till 4.10.1993 whereafter it is not known whether he was reverted to post of Floor Assistant. Tribunal's finding in this regard being contrary to record is overturned.

But even so, it remained to be seen what relief could be granted to petitioner. His services can't be ordered to be regularised against post of Production Assistant because his whole claim is regulated by Memo of offer dated 20.12.84 which fixes terms of contract and makes its renewal from time to time. What makes it more dicey is that time limit prescribed in this memorandum stand

already by-passed. Petitioner has crossed first six months along with stipulated probation of two years and even next three year contract. The only relief, therefore, that can be granted to him in the circumstances is to direct respondents to consider his renewal of contract from 4.10.93 for the post of Production Assistant and payment of arrears of salary from 7.6.85 to 4.10.93 and to pass appropriate orders thereon within four months from receipt of this order. Petitioner's present status shall be maintained till then." (emphasis added)

9. As mentioned above, the Court had also, after dealing with the Memo of offer dated 20.12.1984 given to the applicant, observed that both sides had evolved their own working arrangement giving a go-by to all that was contained in the Memo of offer. As the Hon'ble High Court has clearly stated that the only relief that could be granted to the applicant in the circumstances of the case was a direction to the respondents to consider renewal of his contract from 4.10.1993 for the post of Production Assistant and payment of arrears of salary from 7.6.1985 to 4.10.1993, the claim of the applicant for seniority from 1984 does not appear to be warranted. In the circumstances, as per the OM issued by the respondents dated 19.12.2001 granting arrears of salary on the post of Production Assistant to the applicant for the period from 16.1.1985 to 4.10.1993 is in terms of Hon'ble High Court's order dated 30.7.2001 read with order dated 17.9.2001. In the peculiar facts and circumstances of the case and also having regard to the Tribunal's order dated 5.11.1993 in OA No.1441/1988, the stand taken by the respondents that similar benefits as granted to the other 14 Production Assistants who were selected along with the applicant in 1984 should be granted to him cannot also be faulted. It is not disputed by the applicant that he was selected with these 14 other Production Assistants although he himself was not a party in O.A. 1441/1988. In circumstances of the case, we see no justification in granting the applicant reliefs which have not been granted by the Hon'ble High Court in its order date 30.7.2001 nor granted to other by granting seniority to the applicant alone from 1984.."

23. This Court is in agreement with the reasoning given by the Ld. CAT in rejecting the claim of the Petitioner. From the documents and pleadings on record it can be understood that the parties herein had given a go-by to all the conditions stipulated in the Memo of offer issued to the Petitioner dated 20.12.1984. The only relief which could have been granted to the Petitioner was to consider renewal of his contract from 04.10.1993 and to pay arrears of salary from 16.01.1985 to 04.10.1993. We too, see no justification in granting relief which was not granted by this Court vide Order dated 30.07.2001.

24. Reliance placed by the Petitioner on the case of ***K.V. Jankiraman & Ors.*** (supra) is misplaced. The question before the Apex Court in the said case was regarding the sealed cover procedure which has been adopted in service jurisprudence when an employee is due for promotion but disciplinary/ criminal proceedings are pending against him. Therein the Union of India and other authorities had come in appeal before the Supreme Court challenging the findings of different benches of the tribunal on the Memorandum dated 30.01.1982 regarding sealed cover procedure to be adopted in case of officers against whom disciplinary proceedings were ongoing. Reliance placed by the Petitioner, regarding the findings on the principle of 'no work no pay' recorded by the Hon'ble Supreme Court, would be of no help to his case as they were found upon the basis of the said employee being exonerated from the disciplinary proceedings initiated against him.

25. In this case, the CBI had found the appointment of the Petitioner along with the 14 other Production Assistants to be irregular and on the basis

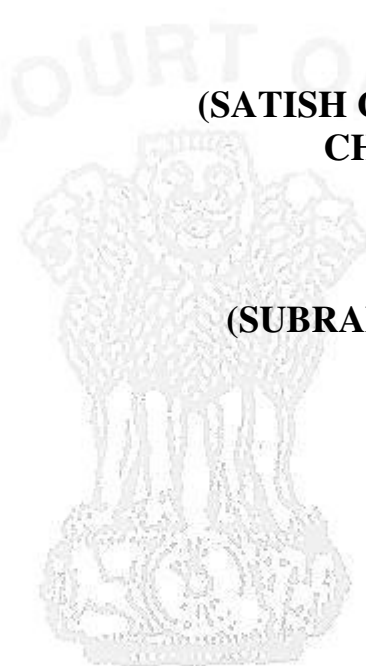
of that, the Petitioner's employment was terminated. It was only on sympathetic grounds that the Petitioner and 14 other Production Assistants were reinstated into service of the Respondents. Thus, the case of ***K.V. Jankiraman & Ors.*** (supra) would not act as a precedent to this case.

26. In light of the aforesaid, we find no merit in this Petition and the same is dismissed accordingly.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

DECEMBER 13, 2022



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